

House File 2130 - Introduced

HOUSE FILE 2130
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 506)

A BILL FOR

1 An Act relating to probate, by amending the probate powers
2 of the clerk and conforming the probate procedures to
3 electronic data management systems standards.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 633.22, Code 2018, is amended to read as
2 follows:

3 **633.22 Probate powers of clerk.**

4 The clerk shall have and may exercise within the county
5 all the powers and jurisdiction of the court and of the judge
6 thereof, in the following matters:

7 ~~1. The appointment of personal representatives who are~~
8 ~~residents of the state, guardians and conservators for minors,~~
9 ~~the fixing and determining of the amount of the bond, or~~
10 ~~waiving the same when permitted by law or by will, and the~~
11 ~~approval of any and all bonds given by fiduciaries in the~~
12 ~~discharge of their duties.~~

13 ~~2.~~ 1. The examination and approval of all intermediate and
14 interlocutory accounts and reports of fiduciaries under this
15 chapter and converting and closing small estates under chapter
16 635.

17 ~~3. The admission of wills of decedents to probate, when~~
18 ~~not contested, and the making of necessary orders in relation~~
19 ~~thereto, including orders for the issuance of commissions to~~
20 ~~take depositions. Proof may be made before the clerk in the~~
21 ~~same manner as is made in open court.~~

22 ~~4. The making of all necessary orders in relation to the~~
23 ~~personal effects of a deceased person, where no objection~~
24 ~~is filed, and perform all other acts within the clerk's~~
25 ~~jurisdiction, as provided in this probate code.~~

26 ~~5. The approval, when notice has been waived by all persons~~
27 ~~interested, of petitions and reports, or joint petitions and~~
28 ~~reports, in respect to the sale, mortgage, pledge, lease or~~
29 ~~exchange of property pursuant to [sections 633.386 to 633.400.](#)~~

30 ~~6.~~ 2. The entering of routine scheduling orders in probate
31 matters as established by the chief judge in each judicial
32 district.

33 Sec. 2. Section 633.27, Code 2018, is amended to read as
34 follows:

35 **633.27 Probate docket.**

1 The clerk shall keep ~~a book~~ an electronic record to be known
2 as the "Probate Docket", which shall show:

3 1. The name of every deceased person whose estate is
4 administered or whose will is admitted to probate, and the date
5 of the person's death.

6 2. The name of each person as to whom application for
7 conservatorship or guardianship is made.

8 3. The names of all the heirs in intestate estates and the
9 surviving spouse of such deceased intestate, and ~~their ages~~
10 whether each person is an adult or a minor and places each
11 person's place of residence, so far as they can be ascertained.

12 4. The title of each trust described in [section 633.10](#)
13 that has not been released by the court from continuous court
14 supervision.

15 5. A note of every sale of real estate made under the order
16 of the court, ~~with a reference to the volume and page of the~~
17 ~~record where a complete record thereof may be found.~~

18 Sec. 3. Section 633.42, Code 2018, is amended to read as
19 follows:

20 **633.42 Requests for notice.**

21 1. At any time after the issuance of letters of appointment,
22 any interested person in the proceeding may file with the
23 clerk a written request for notice of the time and place of
24 all hearings in such proceeding for which notice is required
25 by law, by rule of court, or by an order in such proceeding.
26 The request for notice shall state the name, electronic mail
27 address, telephone number, and post office address of the
28 requester and of the requester's attorney, if any, and the
29 reason the requester is an interested person in the proceeding.
30 The clerk shall docket the request. Thereafter, unless
31 otherwise ordered by the court, the fiduciary shall serve by
32 ordinary or electronic mail a notice of each hearing upon such
33 requester and the requester's attorney, if any.

34 2. A person does not gain standing by filing a request for
35 notice under [this section](#).

1 Sec. 4. Section 633.82, Code 2018, is amended to read as
2 follows:

3 **633.82 Designation of attorney.**

4 The designation of the attorney employed by the fiduciary
5 to assist in the administration of the estate shall be filed
6 in the estate proceedings. The designation shall state the
7 attorney's name, post office address, electronic mail address,
8 and telephone number. The designation shall clearly state
9 the name of the attorney who is in charge of the case and the
10 attorney's name shall not be listed by firm name only.

11 Sec. 5. Section 633.306, Code 2018, is amended to read as
12 follows:

13 **633.306 Record in foreign county.**

14 Whenever it shall appear that the testator died seized of
15 real estate located in a county of this state other than that
16 in which probate is granted, a complete transcript, properly
17 authenticated, of the record entry of the order of court
18 admitting the will to probate, and, if a copy of such will is
19 not contained therein, a certified copy of such will shall be
20 attached thereto, and the same shall be filed by the clerk in
21 the office of the clerk of the district court in such other
22 county, who shall cause the same to be entered in the probate
23 docket, and said transcript shall be recorded in full in the
24 ~~book~~ electronic record kept for the recording of wills in such
25 county. When so recorded, such record may be read in evidence
26 in all courts without further proof.

27 Sec. 6. Section 633.418, Code 2018, is amended to read as
28 follows:

29 **633.418 Form and verification of claims — general**
30 **requirements.**

31 No claim shall be allowed against an estate on application of
32 the claimant unless it shall be in writing, filed ~~in duplicate~~
33 with the clerk, stating the claimant's name, and address,
34 telephone number, and electronic mail address, describing
35 the nature and the amount thereof, if ascertainable, and

1 accompanied by the affidavit of the claimant, or someone for
2 the claimant, that the amount is justly due, or if not yet due,
3 when it will or may become due, that no payments have been
4 made thereon which are not credited, and that there are no
5 offsets to the same, to the knowledge of the affiant, except as
6 therein stated. If the claim is contingent, the nature of the
7 contingency shall also be stated. ~~The duplicate of said claim~~
8 ~~shall be mailed by the clerk to the personal representative or~~
9 ~~the personal representative's attorney of record.~~

10 Sec. 7. REPEAL. Section 633.72, Code 2018, is repealed.

11 Sec. 8. APPLICABILITY. The following apply July 1, 2018, to
12 actions of the clerk of the probate court completed on or after
13 that date:

14 1. The section of this Act amending section 633.22.

15 2. The section of this Act amending section 633.27.

16 3. The section of this Act amending section 633.306.

17 Sec. 9. APPLICABILITY. The following applies July 1, 2018,
18 to notices served on or after that date:

19 The section of this Act repealing section 633.72.

20 Sec. 10. APPLICABILITY. The following apply July 1, 2018,
21 to probate filings made on or after that date:

22 1. The section of this Act amending section 633.42.

23 2. The section of this Act amending section 633.82.

24 3. The section of this Act amending section 633.418.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 This bill amends Code chapter 633 to conform probate
29 procedures to the standards of the electronic data management
30 system as established by the judicial branch and amends the
31 probate powers of the clerk. The bill amends Code section
32 633.22, probate powers of clerk, to eliminate the following
33 duties of the clerk. It eliminates the duty to appoint
34 personal representatives, guardians and conservators for
35 minors, fix and determine the amount of the bond, or waive

1 the same when permitted by law or by will, and the approval
2 of any and all bonds given by fiduciaries in the discharge of
3 their duties. The bill eliminates the duty to admit wills
4 of decedents to probate, when not contested, and to make
5 necessary orders in relation thereto, including orders to issue
6 commissions to take depositions. It eliminates the duty to
7 make all necessary orders in relation to the personal effects
8 of a deceased person, where no objection is filed, and perform
9 all other acts within the clerk's jurisdiction, as provided in
10 the probate code. The bill eliminates the duty to approve,
11 when notice has been waived by all persons interested, of
12 petitions and reports, or joint petitions and reports, in
13 respect to the sale, mortgage, pledge, lease, or exchange of
14 property pursuant to Code sections 633.386 to 633.400.

15 Under Code section 633.22, the clerk retains the power to
16 examine and approve all intermediate and interlocutory accounts
17 and reports of fiduciaries. However, the bill provides that
18 such power is exercisable under Code chapter 633 and that the
19 clerk may convert and close small estates under Code chapter
20 635. The clerk continues to have the ability to enter routine
21 scheduling orders in probate matters as established by the
22 chief judge of the judicial district.

23 The bill amends Code section 633.27 to provide that the
24 clerk no longer keeps the probate docket as a book, but rather
25 as an electronic record. The probate docket must, among other
26 things, name all heirs in intestate estates and the surviving
27 spouse of each deceased intestate, and show whether each
28 person is an adult or a minor, and each person's residence.
29 Currently, the probate docket must include such persons'
30 precise ages, not categorically whether such persons are adults
31 or minors. The probate docket will no longer be required to
32 indicate the volume and page of a real estate record in light
33 of the nature of electronic records.

34 The bill amends Code section 633.42 to require that the
35 requests for notice include a telephone number.

1 The bill amends Code section 633.82 to require that the
2 designation of an attorney includes the attorney's electronic
3 mail address.

4 The bill amends Code section 633.306 to provide that the
5 probate docket is no longer a book, but rather an electronic
6 record.

7 The bill amends the form and verification requirements of
8 claims in Code section 633.418. It eliminates the requirement
9 to file forms in duplicate and the instruction to clerks
10 on what to do with the duplicate claim form. It adds the
11 requirement that the claimant provide a telephone number and
12 electronic mail address.

13 The bill repeals Code section 633.72, which dictates
14 the manner of service for original notices to nonresident
15 fiduciaries.

16 Finally, the bill makes its various sections applicable July
17 1, 2018, to the following: the actions of the clerk of the
18 probate court under Code sections 633.22, 633.27, and 633.306;
19 notices served under Code section 633.72 which is repealed;
20 and probate filings under Code sections 633.42, 633.82, and
21 633.418.